

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	No. 3:06-CR-05
)	(PHILLIPS/SHIRLEY)
)	
DAMION BRADLEY JACKSON,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This cause came before the undersigned for a motion hearing on January 29, 2007. All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. In addition District Judge Thomas W. Phillips specifically referred [Doc.37] the parties Joint Motion To Continue Trial Date [Doc. 36]. Assistant United States Attorney Tracee Plowell appeared on behalf of the government. Attorney James Varner (who was substituted as defendants attorney at the hearing [Doc. 40]) appeared to represent defendant Damion Bradley Jackson, who was also present. The trial was originally set for January 16, 2007.

At the hearing on the parties joint motion for a continuance, the attorneys for both parties acknowledged that attorney Varner needed to review the file regarding potential motions to be filed and he anticipated filing a Motion to Suppress with an evidentiary hearing being necessary. This Court could not permit time for filing a motion for leave to file the motion, conduct the hearing and prepare its Report and Recommendation as to the defendant's anticipated Motion to Suppress Evidence, afford the parties time to file objections, and allow the District Court sufficient time to

rule in less than four (4) months. All parties agreed that it was in their best interest to continue the trial in order to obtain a ruling on the defendant's suppression motion. See 18 U.S.C. § 3161(h)(8)(A). Defendant Jackson was present and acknowledged his desire for a continuance of the trial and that he would remain in detention until the new trial date.

The Court agrees with counsel that there is insufficient time for the defendant to determine what motions to file and prepare and file said motions including a motion to suppress, and for this Court to rule on the Motion to Suppress Evidence, prepare a Report and Recommendation, allow the parties time to object to the same, and provide the District Court sufficient time to rule on the objections in less than four (4) months. Additionally, without a continuance, the parties would not have the reasonable time necessary to prepare for trial in light of the rulings on the suppression issue, despite counsel's due diligence. See 18 U.S.C. § 3161(h)(8)(B)(iv). The Court finds that all of this cannot be accomplished prior to the new trial date of **May 22, 2007**. The Court finds that if the continuance were not granted a miscarriage of justice would occur. 18 U.S.C. § 3161(h)(8)(B)(i). The Court further notes that all counsel agreed with these findings. Furthermore all time between the filing of the defendant's motions on January 11, 2007 and January 16, 2007, up to the hearing on January 29, 2007 is fully excludable time. 18 U.S.C. § 3161(h)(1)(F).

Thus, the parties' joint motion for continuance is **GRANTED**. The Court further finds, and the parties agree, that all the time between the hearing on January 29, 2007, and the new trial date on May 22, 2007 is fully excludable time for the reasons set forth herein and under 18 U.S.C. § 3161(h)(1)(F)&(J) and (h)(8)(A)-(B). With regard to other scheduling, a tentative motion hearing was set before the undersigned for **March 13, 2007 and 12:30 p.m.**

Accordingly, it is ordered:

(1) The parties' Joint Motion For A Continuance [**Doc. 36**] is **GRANTED**;

(2) The trial of this matter is reset to commence on **May 22, 2007, at 9:00 a.m.**, before the Honorable Thomas W. Phillips, United States District Judge;

(3) All time between the hearing on **January 29, 2007** and the new trial date of **May 22, 2007**, is fully excludable time for speedy trial purposes as set forth above;

(4) A motion hearing in this matter is set for **March 13, 2007 at 12:30 p.m.** before the undersigned.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge